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NRL Texas, Bosworth Defendants;  
and Marine Quest Defendants*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

VOLVO CONSTRUCTION EQUIPMENT  
RENTS, INC.,  
Plaintiff,

vs.

NRL RENTALS, LLC, NRL TEXAS  
RENTALS, LLC, NRL SAN ANTONIO  
RENTALS, LP, NRL HIGH ACCESS, LLC,  
VEGAS RENTS, LLC, ROBERT BALLI,  
HILARY BALLI, R& H.P. BALLI FAMILY  
TRUST, NICK BALLI, LARRY CHAVEZ,  
BOSWORTH FARMS, INC., DWIGHT  
BOSWORTH, MARCEL BOSWORTH,  
MARINA QUEST, INC., MARINE QUEST-  
JOE POOL, INC., MARINE QUEST-  
TEXOMA, LP, MARINE QUEST TEXOMA  
II, LP, MARINE QUEST-CAPTAINS COVE,  
LP, MARINE QUEST-EAGLE MOUNTAIN,  
LP, MARINE QUEST-ANDERSON MILL,  
LP, MARINE QUEST-MARSHALL FORD,  
LP, MARINE QUEST-HARBOR ONE, LP,  
MARINE QUEST-BOZ I, LP, MARINE  
QUEST-HIDDEN COVE LP, MARINE  
QUEST-EXECUTIVE, LP, MARINE  
QUEST-CHANDLER'S LANDING, LP,  
MARINE QUEST-LAKE COUNTRY, LP,  
MARINE QUEST-INVESTMENTS, LP,  
TARRANT COUNTY MARINE  
ENTERPRISES, INC., LAKE COUNTRY  
MARINA, INC., ELITE MARINE  
MANAGEMENT, LLC, JEFFERSON BANK,  
PLAINSCAPITAL BANK,

Defendants.

Case No.: 2:09-cv-00032-JCM -VCF

**ORDER REGARDING PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT AGAINST DEFENDANT  
MARCEL BOSWORTH ON  
PLAINTIFF'S CLAIMS FOR  
CONVERSION AND UNJUST  
ENRICHMENT (#509)**

Presently before the court is the Motion for Partial Summary Judgment Against Defendant Marcel Bosworth on Plaintiff's Claims for Conversion and Unjust Enrichment (Plaintiff's Motion) (#509) filed by Plaintiff Volvo Construction Equipment Rents, Inc. (Plaintiff). Defendants Nick Balli; Marcel Bosworth; Dwight Bosworth; Marine Quest, Inc.; Marine Quest-Joe Pool, Inc.; Marine Quest-Texoma, LP; Marine Quest-Texoma II, LP; Marine Quest-Captains Cove, LP; Marine Quest-Eagle Mountain, LP; Marine Quest-Anderson Mill, LP; Marine Quest-Hidden Cove, LP; Marine Quest-Executive, LP; Marine Quest-Chandler's Landing, LP; Marine Quest-Lake Country, LP; Marine Quest-Investments, LP; Tarrant County Marine Enterprises, Inc.; Lake Country Marina, Inc.; and Elite Marine Management, Inc. (collectively, Defendants) filed a response (#530), and Plaintiff filed a reply (#540).

## **I. INTRODUCTION**

Plaintiff's Motion pertains to the propriety of a \$390,000.00 wire transfer from a deposit account held by Defendant NRL Rentals, LLC, to a deposit account held by Defendants Dwight and Marcel Bosworth. Plaintiff contends that Marcel Bosworth converted, and/or was unjustly enriched in the amount of, \$390,000.00 because Plaintiff had a security interest in the account from which the funds were transferred. Because Plaintiff failed to assert a claim to those funds prior to the transfer, however, its claims for conversion and unjust enrichment as to those funds must be decided in favor of all of Defendants as a matter of law.

## **II. RELEVANT FACTS**

On March 12, 2005, NRL Rentals, LLC (NRL Las Vegas), executed a security agreement (the Security Agreement), pursuant to which, among other things, NRL Las Vegas granted non-party Volvo Financial Services (VFS) a security interest in the equipment, inventory, and accounts (including deposit accounts), and the proceeds of all of the foregoing, of NRL Las Vegas. Plaintiff is the successor-in-interest to the rights of VFS under the Security Agreement.

On August 31, 2007, in connection with a promissory note executed by NRL Las Vegas in favor of Jefferson Bank, Jefferson Bank wired \$400,000.00 to a PlainsCapital Bank deposit account held by NRL Las Vegas. On September 4, 2007, NRL Las Vegas wired \$390,000.00

(the Loan Proceeds) to a PlainsCapital deposit account held by Defendants Dwight and Marcel Bosworth. Plaintiff did not seek to exercise any rights under the Security Agreement during the time that the Loan Proceeds remained in the NRL Las Vegas Account.

Defendant Tarrant County Marine Enterprises, Inc. (TCM), eventually repaid the loan, with interest.

### **III. DISCUSSION**

#### **A. Legal Standards.**

##### **1. Summary Judgment.**

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; Bagdadi v. Nazar, 84 F.3d 1194, 1197 (9th Cir. 1996). An issue is genuine only if there is a sufficient evidentiary basis upon which a reasonable finder of fact could find for the nonmoving party, and a dispute is material only if it could affect the outcome of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). The moving party bears the burden of informing the court of the basis for its motion, together with evidence demonstrating the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 371, 323 (1986). Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to present, via affidavits, deposition testimony, answers to interrogatories, or admissions, specific facts demonstrating that there is a genuine issue of fact to be tried. Id. at 324; Fed. R. Civ. P. 56.

##### **2. Unjust Enrichment.**

To make out its claim for unjust enrichment, Plaintiff must demonstrate that (1) it conferred a benefit (direct or indirect) on the Defendants; (2) Defendants appreciated such benefit; (3) Defendants accepted and retained such benefit; and (4) it would be inequitable for Defendants to retain such benefit without paying Plaintiff therefor. Unionamerica Mtg. v. McDonald, 626 P.2d 1272, 1273 (Nev. 1981).

